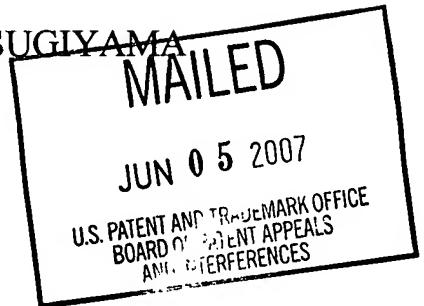


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* YOSHIKAZU TOBINAGA and SUSUMU SUGIYAMA

Application 10/666,581  
Technology Center 3700



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 12, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, this application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Appellants filed an Appeal Brief which was received by the USPTO on May 23, 2006. The content provided under the heading "Status of Claims," is not commensurate in scope with 37 C.F.R. § 41.37(c)(1)(iii) because the content does not clearly identify the claims that are on appeal. Also, the content listed under the heading "The Summary of Claimed Subject Matter" does not provide a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. *See* 37 C.F.R. § 41.37(c)(1)(v).

EXAMINER'S ANSWER

On July 28, 2006, an Examiner's Answer was mailed. In the Evidence Relied Upon section, page no. 3, paragraph 8, the Examiner has listed 3 references (Park et. al., D'Ussel, and Arias, et al.), however, the Examiner's Answer mentions another patent that has not been listed in paragraph 8 (Sherman et al. 6,821,281)(See Answer, page no. 8). Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of *all* references mentioned in the statement of rejections. *See the Manual of Patent Examining Procedure, (MPEP) § 1207.02.*

Correction is required.

CONCLUSION

Accordingly, it is

*ORDERED* that the application is returned to the Examiner:

- (1) to hold the Appeal Brief filed May 23, 2006, defective;
- (2) to instruct Appellants to file a "paper" that contains the appropriate content under the headings "Status of Claims" and "The Summary of Claimed Subject Matter" in accordance with 37 C.F.R. § 41.37(c)(1)(iii) and (c)(1)(v);

Application 10/666,581

- (3) for the Examiner to issue and mail a PTOL-90 considering any "paper" filed by Appellant and properly identifying all references used in the rejection of the claims as identified in Examiner's Answer under the Evidence Relied Upon section, paragraph (8); and
- (4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Patrick J. Nolan*  
\_\_\_\_\_  
PATRICK J. NOLAN  
Deputy Chief Appeals Administrator  
(571) 272-9797

PJN/hh

KENNEDY COVINGTON LOBDELL & HICKMAN, LLP  
214 N. TRYON STREET  
HEARST TOWER, 47TH FLOOR  
CHARLOTTE, NC 28202